## REMARKS

Claims 1-20 are currently pending in the patent application. Applicants have submitted an amendment to independent Claim 11 as further discussed below. No new matter is introduced by the amendment.

The Examiner has rejected all of the claims under 35 USC 102(b) as anticipated by the teachings of the Kenner patent (hereinafter "Kenner"). For the reasons set forth below, Applicants believe that the claims are patentable over the cited art.

The present invention is directed to a system, method, and program storage device for providing load balancing among a plurality of mirror servers. When a user at a client machine contacts a web site, the web page and a predetermined script are transmitted to the client. The predetermined script is automatically executed at the client to establish connections with each of the plurality of mirror servers which are associated with the web page and which can serve the client's request. As the connections are established between the client and each of the mirror servers, the response times are measured. The client selects the mirror server with the most favorable response time, maintaining the connection with the selected mirror

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server and terminating the connections with the remaining mirror servers. The "load balancing" is done at the client location by evaluating the response times, which are assumed to be a function of current workload.

The Kenner patent is directed to server-side optimization of data delivery on a distributed computer network. Kenner provides a plurality of mirror servers, each of which is capable of responding to a client's request for data delivery. Each client is provided with software which includes a configuration utility and a client program. "The configuration utility is used first to determine which delivery sites provide improved performance for that particular user" (Col. 5, lines 39-43). Tests are run and the test results are provided to the service provider's database (Col. 5, lines 57-60). Thereafter the delivery site chosen by the configuration utility is used by that user for the retrieval of content managed by the delivery system service provider (Col. 5, lines 61-63).

What Kenner teaches is that a determination is made in advance as to which delivery site/mirror server will handle a client's requests. That determination is made prior to the client making any requests. Kenner does not teach or suggest that the determination is made in response to the client accessing the web page. Rather, Kenner executes the

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configuration utility for each client prior to any client requests.

Applicants respectfully assert that the Kenner patent does not anticipate the invention as claimed. As is expressly recited in the independent claims, the present invention provides steps and means for transmitting the web page and the predetermined script "when said web page is accessed by a client" (Claims 1-10 and 20) and "in response to said client accessing a web page" (Claims 11-19). While Kenner performs tests with its configuration utility, those tests are done in advance of any user requests and the delivery site is determined for that user. Anticipation under 35 USC 102 is established only when a single prior art reference discloses each and every element of a claimed invention. See: In re Schreiber, 128 F. 3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997); In re Paulsen, 30 F. 3d 1475, 1478-1479, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994); In re Spada, 911 F. 2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990) and RCA Corp. v. Applied Digital Data Sys., Inc., 730 F. 2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). Since Kenner does not teach the dynamic transmitting script in response to the client accessing the web site, and does not teach the executing of script for measuring response times and selecting a server in response to the client

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accessing the web site, it cannot be maintained that Kenner anticipates the invention as claimed.

Applicants further note that Kenner's teachings regarding "on-the-fly" delivery site selection, found for example at Col. 6, lines 31-44, also do not anticipate the dynamic transmitting script, executing script, and selecting of a server as claimed. What Kenner teaches is that a delivery site will be selected for a client "on-the-fly" based on performance data collected from previous network tests. Therefore, Kenner does not teach or suggest the dynamic transmitting and executing of script for measuring response time and selecting a server in response to the client/user accessing the web page. Further, Kenner does not make its "on-the-fly" determination based on execution of a script which creates connections to the client and measures response times. Rather, Kenner makes the delivery site determination based on network performance data between other servers and clients.

It is well established under U. S. Patent Law that, for a reference to anticipate claim language under 35 USC 102, that reference must teach each and every claim feature. Since the Kenner patent does not teach sending predetermined script with a web page from the server group to the client in response to a client request, does not teach executing

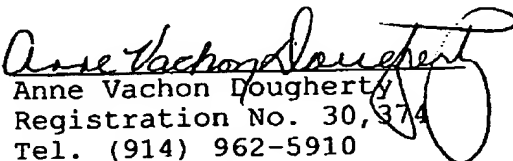JP919990263-US1                -10-

received script at the client, does not teach the client creating connections with a plurality of mirror servers, does not teach client measurement of response times, and does not teach client selection of a mirror server having the most favorable response time, it cannot be maintained that the Kenner patent anticipates the invention as claimed in independent Claims 1, 11, and 20.  Applicants further point out that a reference which does not anticipate the language of independent claims cannot be said to anticipate the language of claims which depend therefrom and add further limitations thereto.  Accordingly, Applicants conclude that the Kenner patent does not anticipate the language of any of Claims 1-20.

Based on the foregoing amendments and remarks, Applicants respectfully request entry of the amendments, reconsideration of the amended claim language in light of the remarks, withdrawal of the rejections, and allowance of the claims.

Respectfully submitted,

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